

AGENDA BILL APPROVAL FORM

Agenda Subject: Outside Legal Counsel Agreement with Foster Pepper, PLLC		Date: August 3, 2009
Department: Legal/Finance	Attachments: Resolution No. 4511 Legal Services Agreement	Budget Impact: N/A
Administrative Recommendation: City Council adopt Resolution No. 4511.		
Background Summary: The City of Auburn has utilized the legal services of Foster Pepper, PLLC, for many years, with the law firm primarily serving as the City's bond counsel. The City does not currently have a professional services agreement with Foster Pepper. Due to the outside legal services anticipated for upcoming debt financing issues and alternative financing measures, such as the new market tax credits, a legal services agreement with Foster Pepper is needed.		
A3.12.5 A0803-2		
Reviewed by Council & Committees: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Arts Commission <input type="checkbox"/> Airport <input type="checkbox"/> Hearing Examiner <input type="checkbox"/> Human Services <input type="checkbox"/> Park Board <input type="checkbox"/> Planning Comm. </div> <div style="width: 45%;"> COUNCIL COMMITTEES: <input checked="" type="checkbox"/> Finance <input checked="" type="checkbox"/> Municipal Serv. <input type="checkbox"/> Planning & CD <input type="checkbox"/> Public Works <input type="checkbox"/> Other _____ </div> </div>		Reviewed by Departments & Divisions: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Building <input type="checkbox"/> Cemetery <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Fire <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Public Works <input type="checkbox"/> Information Services </div> <div style="width: 45%;"> <input type="checkbox"/> M&O <input type="checkbox"/> Mayor <input type="checkbox"/> Parks <input type="checkbox"/> Planning <input type="checkbox"/> Police <input type="checkbox"/> Human Resources </div> </div>
Action: Committee Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Council Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Referred to _____ Until ____/____/____ Tabled _____ Until ____/____/____ <div style="text-align: right;">Call for Public Hearing ____/____/____</div>		
Councilmember: Backus		Staff: Heid/Coleman
Meeting Date: August 3, 2009		Item Number: VIII.B.5

RESOLUTION NO. 4 5 1 1

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
AUBURN, WASHINGTON, AUTHORIZING THE MAYOR
AND CITY CLERK TO EXECUTE AN AGREEMENT
BETWEEN THE CITY OF AUBURN AND FOSTER
PEPPER, PLLC FOR LEGAL SERVICES

WHEREAS, the City anticipates the need for outside legal services for
upcoming debt financing issues and alternative financing measures, such as
the new market tax credits; and

WHEREAS, the City of Auburn has utilized the legal services of Foster
Pepper, PLLC, for many years, with the law firm primarily serving as the City's
bond counsel; and

WHEREAS, the City does not currently have a professional services
agreement with Foster Pepper; and

WHEREAS, it is in the public interest for the City to enter into an
agreement with Foster Pepper, PLLC, for specified legal services.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN,
KING COUNTY, WASHINGTON, HEREBY RESOLVES as follows:

Section 1. The Mayor of the City of Auburn and the Auburn City Clerk
are hereby authorized to execute an Agreement between the City of Auburn
and Foster Pepper, PLLC for legal services which agreement shall be in
substantial conformity with the Agreement a copy of which is attached hereto,
marked as Exhibit "A" and incorporated herein by this reference.

Section 2. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 3. This resolution shall be in full force and effect upon passage and signatures hereon.

Dated and Signed this _____ day of _____, 2009.

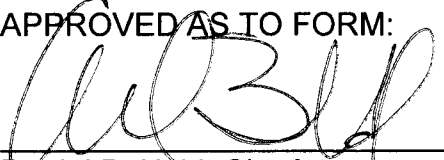
CITY OF AUBURN

PETER B. LEWIS, MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:



Daniel B. Heid, City Attorney

LEGAL SERVICES AGREEMENT FOSTER PEPPER, PLLC

THIS CONTRACT is made and entered into by and between the **CITY OF AUBURN**, hereinafter referred to as the "City," and **FOSTER PEPPER, PLLC**, hereinafter referred to as the "Law Firm." The City and the Law Firm hereby agree to the following terms and conditions:

1. Services Provided

A. The primary purpose of this contract is to provide legal advice, consultation and services to the City of Auburn, specifically, (1) bond counsel services described in section A of the Scope of Services attached as Exhibit 1 to this Contract; (2) other finance counsel services described in section B of Exhibit 1; and (3) other legal services as expressly requested by the City, including without limitation services in the areas of land use, environmental, construction, condemnation, public records, open public meetings, and/or labor law.

B. The City's Finance Director shall be the City's representative for bond counsel services described in Exhibit 1, and the City Attorney shall be the City's client representative and contact person for all other services performed under this contract. The Law Firm shall designate a representative and contact person for bond counsel work, and may designate a separate representative and contact person with respect for other work performed by Law Firm for the City.

C. The Law Firm will keep City well informed of all legal matters it handles on the City's behalf. The Law Firm shall send the City copies of all material papers coming in or going out of its offices to or from third parties. The Law Firm shall, at such times and in such form as the City may require, furnish the City with periodic reports pertaining to the work and services undertaken pursuant to this agreement.

2. Compensation and Payment

Until December 31, 2012, compensation for the bond counsel services described in Section A of Exhibit 1 will be payable as set forth in Exhibit 2, only upon the issuance of the bonds or notes with respect to which the services are rendered. Compensation for bond counsel services may be adjusted commencing January 1, 2013, by agreement of the parties.

Until December 31, 2012, compensation for the non-bond counsel finance-related services described in Section B of Exhibit 1, and for the other services requested by the City Attorney, will be billed monthly at the hourly rates for Law Firm's attorneys expected to assist the City are set forth in Exhibit 3. Compensation for non-bond counsel services may be adjusted commencing January 1, 2013, by agreement of the parties. As additional attorneys are proposed to perform work for the City, Law Firm will propose an applicable hourly rate. As specific projects are proposed for assistance by the Law Firm, the City Attorney and the Law Firm shall discuss budgets for that work and/or rate adjustments.

If the Law Firm performs non-bond counsel services in connection with a project that is later financed through bonds, the hourly fees paid to the Law Firm in connection with those services

will serve as an offset to the bond counsel fee to the extent that the bond counsel fee exceeds the time value of the work performed by individual Law Firm lawyers at their regular (not discounted) hourly rates then in effect. For example, if the Law Firm performs and is paid \$5,000 for hourly work negotiating an intergovernmental agreement regarding revenues that are later pledged to bonds, and the Law Firm's bond counsel fee for those bonds would be \$25,000 based on the schedule in Exhibit 2 but the time value for Law Firm attorneys performing the bond counsel services is only \$19,000 at their regular, non-discounted rates, then the Law Firm will receive \$20,000 as the bond counsel fee for that bond issue (*i.e.*, \$25,000 minus the \$5,000 previously paid for hourly work).

The Law Firm may incur various costs and expenses in performing legal services under this Agreement. The City agrees to pay costs in connection with Law Firm's performance under this agreement. Costs subject to this section include mileage, any messenger service and other special delivery fees, and photocopying expenses. However, if the Law Firm and the City agree that out of state travel is necessary, the City agrees to pay transportation costs of any necessary out-of-state travel by Law Firm. The Law Firm shall fly coach class on any airplane trips. The City will be charged the hourly rate for the time attorneys in the Law Firm spend traveling, so long as such attorneys are not engaged in work for other clients during the travel time billed.

For work billed on an hourly basis, the Law Firm will provide a detailed invoice identifying the work performed, the date accomplished, and the hours charged. The Law Firm will also detail and provide documentation for any costs. The City will pay the Law Firm within 30 days after receipt of properly completed invoices for legal services. Invoices for work performed on an hourly basis shall be submitted to the City Attorney. Bond counsel services bills shall be submitted to the City's Administrative Services Director.

Payment shall be considered timely if made by the City within 30 days after receipt of a properly completed invoice.

Advance Payment Prohibited. No payment in advance or in anticipation of services or supplies under this contract shall be made by the City.

3. Termination of Contract

Either party may terminate this agreement prior to that date upon 30 days written notification, subject to the Washington Rules of Professional Conduct applicable to attorneys. It is agreed that the Law Firm will be compensated for services provided through the date of notification of termination at the applicable hourly rates. However, in the case of bond counsel services, the Law Firm will be compensated on an hourly basis at the time bonds are issued (at discounted rates applicable under this contract), for the work that the Law Firm performed with respect to that bond issue, but in no event greater than the fee calculated in accordance with the bond counsel fee schedule set forth in Exhibit 2. Compensation for any services provided after notification of termination shall be pursuant to agreement of the parties.

4. Contract Amendments

Modifications to the contract, including changes to the scope of representation or the maximum compensation, and term of agreement shall be made by written agreement executed by both parties.

5. Applicable Law and Venue

This contract shall be governed by the laws of the State of Washington. In the event of a lawsuit involving this contract, venue shall be proper only in King County Superior Court.

6. Independent Capacity of Law Firm

The Law Firm and its employees or agents performing under this contract are not employees or agents of the City. The Law Firm will not hold itself out as, nor claim to be, an officer or employee of the City by reason of this contract, nor will the Law Firm make any claim of right, privilege, or benefit which would accrue to a civil service employee under civil service laws applicable to the City.

7. Conflicts of Interest

The parties recognize that Law Firm may be asked to represent clients in cases or on matters adverse to the City. The Law Firm shall notify the City when the Law Firm is asked to participate in cases or matters adverse to the City by advising the City Attorney of the nature of the matter or the name of the case, and will request a written waiver from the City prior to undertaking work on such case or matter. The City and the Law Firm will use the "Guidelines: Conflicts and Sensitive Issues" attached as Exhibit 4 as working guidelines for approaching potential conflicts of interest.

8. Confidentiality

The Law Firm shall maintain as confidential all information concerning its advice and recommendations, as well as information related to the business of the City, its financial affairs, relations with its clientele and its employees, and any other information which may be specifically classified as confidential by the City in writing to the Law Firm. To the extent consistent with RCW 42.56 (Public Records Act), the City shall maintain all information which the Law Firm specifies in writing as confidential.

9. Professional Liability Insurance

The Law Firm shall maintain professional liability insurance to cover any work performed by the Law Firm pursuant to this Agreement. Such insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

10. Licensing

The Law Firm shall be licensed to practice law in Washington and in the City of Auburn, and be in good standing with the Washington State Bar Association. The Law Firm is responsible for compliance with all applicable city and state business licensing.

CITY OF AUBURN

By: _____

Title: _____

Date: _____

FOSTER PEPPER PLLC

Federal Tax ID: 91-0606972

Date: _____

Address:

1111 Third Avenue, Suite 3400

Seattle, WA 98104-3200

Attest:

Dan Daskam, City Clerk

Approved as to Form:

Dan Heid

EXHIBIT 1

SCOPE OF BOND COUNSEL/FINANCE COUNSEL SERVICES FEES FOR BOND COUNSEL SERVICES

In the following, we use the term "bonds" to include any obligation of the issuing local government (the "City") for which we are asked to serve as bond counsel.

A. BOND COUNSEL SERVICES

Those services which Foster Pepper PLLC traditionally provides as bond counsel to the City include:

- (1) Advising the City and its consultants on the legal requirements applicable to and, when requested, participating with those consultants and City's staff in planning, the financing of a project, including advice on state law and federal income tax and securities laws;
- (2) Reviewing the transcripts relating to the prior issuance by the City of related outstanding obligations (typically revenue obligations), to assure conformity of the bonds with applicable covenants and conditions;
- (3) Based on facts provided by the issuer, performing the necessary legal analysis to determine, in financings in which the bonds are intended to be tax-exempt, whether interest on the bonds will qualify for an exclusion from gross income for federal income tax purposes, and preparing tax exemption and nonarbitrage certificates;
- (4) Drafting the ordinances/resolutions and other documents necessary to authorize the bonds to be sold and issued (including, where applicable, ballot title ordinances/resolutions);
- (5) If requested, attending certain meetings relating to the sale and issuance of the bonds;
- (6) Forwarding City financing documents to bond rating agencies and/or bond insurers, when requested by the City or City's financial consultant or underwriter, and explaining those documents to agency and insurer representatives;
- (7) If requested, preparing the official statement and if not, reviewing the official statement, offering circular or other sales material relating to the bonds;
- (8) Preparing closing documents necessary to support the issuance of the bonds and assembling the transcript after the closing; and
- (9) Subject to the completion of proceedings to our satisfaction, furnishing the firm's approving legal opinion for the bonds regarding the validity and binding effect of the bonds and the excludability of interest on the bonds from gross income for federal income tax purposes.

Our bond opinion will be based on facts and law existing as of its date, and will constitute the expression of our professional judgment on the matters expressly addressed and not a guarantee of result. In rendering that opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation, and we will assume the City's continuing compliance, after the issue date, with applicable laws relating to the bonds. During the course of this engagement, we will rely on the City to provide us with complete and timely information on all developments pertaining to any aspect of the bonds and their security, as well as the expected use of bond proceeds. We understand and expect that officers and employees of the City will cooperate with us in this regard.

B. OTHER SERVICES

Traditional bond counsel services described above do not include the following additional bond and project-related work for the City which we would be pleased to perform on request, working with the City and its designated representatives. The provision of these services involves appropriate fee arrangements.

(1) The drafting or review for sufficiency of any environmental impact statements or other evidence of compliance with the State and National Environmental Policy Acts, the Shorelines Management Act, Growth Management Act and similar laws;

(2) Giving advice to the City's consultants regarding the applicability of the registration requirements under federal or state securities laws or regarding federal and state securities disclosure requirements or due diligence review;

(3) Negotiation and drafting of repurchase agreements, investment contracts, custodial agreements, swap agreements, credit enhancement or liquidity facilities (other than bond insurance), and contracts (including contracts with developers or owners of property included within local improvement district formed by the City), or disputes or litigation in connection therewith;

(4) The drafting or obtaining of state or federal legislation;

(5) Participating in administrative proceedings, trial or appellate litigation;

(6) Drafting special assessment City formation and assessment documents and attending special assessment hearings;

(7) Work in connection with seeking or obtaining governmental assistance or approvals from governmental agencies other than the City, necessary for carrying out the purposes of the bond issue;

(8) Providing services relating to public works bidding, negotiating design or construction contracts, or carrying out the acquisition of property or the construction of projects;

(9) Representing the City in Internal Revenue Service examinations or inquiries, or Securities and Exchange Commission investigations; or

(10) Addressing any other matter not specifically set forth above that is not required to furnish our bond opinion.

C. FILE MANAGEMENT

After the transaction is concluded, we will deliver to the City a complete copy of the transcript of the transaction. A transcript is delivered generally within 30 to 60 days after closing. We then close our files regarding the matter, and our representation on the transaction is completed. Additional services after closing would be addressed under Part B, above. All records and transcripts are records of the City of Auburn.

EXHIBIT 2

Fees for Bond Counsel Services

Bond counsel services will be compensated as follows:

Issue Size	G.O. Bonds	Revenue Bonds
\$1,000,000 or less	Negotiable	Negotiable
\$1MM - \$4,999MM	\$7,500 + 2.40 per thousand above \$1MM	\$9,000 + 2.88 per thousand above \$1MM
\$5MM - \$9,999MM	\$17,100 + 1.20 per thousand above \$5MM	\$20,520 + 1.40 per thousand above \$5MM
\$10MM - \$24,999MM	\$23,200 + .85 per thousand above \$10MM	\$27,720 + 1.02 per thousand above \$10MM
\$25MM - \$50 MM	\$35,850 + .55 per thousand above \$25 MM	\$43,020 + .66 per thousand above \$25 MM
\$50MM +	Negotiable	Negotiable

Adjustments to Base Fee Schedule

1. Bond Anticipation Notes: 0.50 x base fee.
2. Complex Transactions: Complex transactions involving conduit borrowings, lease financings, swaps or derivatives would be negotiable based on complexity of the transaction.
3. Refundings: 1.20 x base fee.
4. Private Placements With A Bank – Single Bond: 0.75 x base fee.
5. Preparation of Official Statements: \$7,500 for general obligation bonds, and \$10,000 for revenue bonds.
6. Public Works Trust Fund and State Revolving Fund Counsel: Hourly.
7. Local Improvement District bond counsel and special counsel: Negotiable.

EXHIBIT 3

Initial Hourly Rates Applicable to City

<i>Attorney</i>	<i>2009 Rate</i>	<i>Discounted Rate</i>
Steve DiJulio	\$465.00	\$430.00
Marc Greenough	\$375.00	\$340.00
Greg Guedel (procurement)	\$390.00	\$350.00
Julie Kebler (employment)	\$375.00	\$335.00
Chris Napier (real estate)	\$375.00	\$335.00
Jeff Nave (tax credits)	\$410.00	\$370.00
Nancy Neraas	\$400.00	\$360.00
Alice Ostdiek	\$375.00	\$340.00
Will Patton	\$375.00	\$340.00
Mike Schechter	\$285.00	\$255.00
Allison Schwartzman	\$305.00	\$275.00
Richard L. Settle (environ.)	\$480.00	\$430.00
Hugh Spitzer	\$420.00	\$375.00
Lori Terry Gregory (environ.)	\$415.00	\$375.00
Bill Tonkin	\$475.00	\$400.00
<u>Research & Support Staff</u>		
Barbara Rothwell	\$160.00	\$145.00

EXHIBIT 4

Guidelines for Addressing Conflicts and Sensitive Issues

1. Objectives

Foster Pepper PLLC ("FP") from time to time may be asked to provide legal services to the City on a variety of matters, including work as bond counsel, counsel on public disclosure, work on land use, environmental, land use, construction, employment and other areas of law. FP will provide services to the City, as requested, pursuant to a services contract. That contract provides that FP serves as bond counsel, and will perform services in other areas on a project-by-project basis, as requested by the City during the term of the contract.

While providing various legal services to the City, FP may be asked to do legal work for other clients that may have interactions with the City. FP understands that the City is likely to have particular sensitivity about actual or potential conflicts of interest with regard to those other representations. Likewise, the City understands that there are a number of circumstances in which FP attorneys should be able to represent clients in matters before the City as a regulatory authority, or in matters involving the City as a contracting party — in either instance unrelated to the matters on which FP is assisting the City. The City also understands that FP and its other clients have an interest in obtaining some degree of certainty prior to the establishment of any attorney-client relationship. The following principles are intended to strike a reasonable balance between these interests.

2. Potentially Sensitive Matters

The following types of matters should be considered potentially sensitive:

Matters implicating significant policy judgments of the City Manager or Council

Matters likely to require significant contact with a City elected official in an adverse relationship (such as a deposition or in negotiations)

Matters in which large amounts (greater than \$100,000) of City money or liability exposure are at stake

Litigation involving constitutional claims or challenges

Litigation challenging the City's authority to act (contrasted with a matter in which the City's authority is accepted, but the matter challenges the City's application of existing laws or ordinances)

Matters in which the City's actions are likely to be the subject of significant publicity or policy concern

3. Resolution of Conflicts

Before undertaking a legal matter for a person or entity where that representation would create, or reasonably could be expected to later create, an ethical conflict with its representation of the City and/or involve a potentially sensitive matter, FP shall in writing (by letter or e-mail) call the matter to the attention of the City Attorney and request a waiver of the conflict. Such a request for a waiver should specifically address whether, in the view of FP, the matter is "potentially sensitive." The City Attorney will consult appropriate City personnel and with reasonable promptness (ordinarily within 3 working days) provide FP with a determination whether a conflict exists and, if so, whether the City will provide a written waiver (which may be subject to specific conditions or limitations) or the City's decision not to waive the conflict. FP will expect that in situations not involving a "potentially sensitive" matter, the City would ordinarily agree to provide a waiver, and that the City will give consideration to a waiver even in potentially sensitive situations. In instances where the City and FP determine that there is a potential or actual conflict of interest, FP will simultaneously consult with the other client (or potential client) and seek a corresponding waiver from that other client so that FP's continuing ability to fully represent the City in then-current matters may continue unhindered.